

Court No. - 36

Case :- WRIT - A No. - 13722 of 2023

Petitioner :- Smt. Shalu Sharma

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Anuruddh Chaturvedi

Counsel for Respondent :- C.S.C.,Durga Singh

Hon'ble Manjive Shukla,J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1, 2, 3 & 4 as well as Mr. Durga Singh, learned counsel appearing for the Respondent No. 5.

2. Petitioner through this writ petition has challenged the order dated 7.7.2023 passed by the District Basic Education Officer, Etawah and District Coordinator (Girls Education), Samagra Shiksha, Etawah, whereby engagement of the petitioner as Accountant in Kasturba Gandhi Balika Vidyalaya Ushrahar Takha, Etawah, has been terminated.

3. Facts of the case, in brief, are that petitioner was engaged as Accountant in Kasturba Gandhi Balika Vidyalaya Ushrahar Takha, Etawah in the year 2013 and her appointment in the said capacity has been renewed on yearly basis and lastly her term (for the session 2022-23) has been renewed vide order dated 30.7.2022. A show cause notice was issued to the petitioner on 20.5.2023 but it was not served to the petitioner due to incorrect Pin Code on the envelope and ultimately, the said show cause notice has been served on 10.7.2023 i.e. after passing of the order dated 7.7.2023 which is impugned in this writ petition. Another show cause notice was issued to the petitioner on 3.6.2023, to which petitioner has submitted her detailed reply on 8.6.2023. Petitioner after receiving the show cause notice dated 20.5.2023, on 10.7.2023, has also submitted her reply to the said show cause notice on 10.7.2023 itself.

4. Learned counsel appearing for the petitioner has submitted that from a bare perusal of the order dated 7.7.2023 which is impugned in this writ petition, it clearly comes out that District Basic Education Officer, Etawah and District Coordinator (Girls Education), Samagra Shiksha, Etawah have terminated

engagement of the petitioner without considering the petitioner's reply. Learned counsel appearing for the petitioner has also submitted that once petitioner has submitted reply to the show cause notices issued to her, then it is obligatory on the respondents to consider the said reply point-wise before passing the order terminating the engagement of the petitioner, whereas the impugned order dated 7.7.2023, in unambiguous terms, demonstrates that the reply submitted by the petitioner has not been considered at all.

5. Learned counsel appearing for the petitioner has argued that it is well settled proposition of law that once a show cause notice has been issued by the authority to an employee and employee has submitted his reply, then while passing the final order, reply submitted by the employee should be considered and where the authority has not considered the reply, then the order passed in the matter cannot sustain in the eyes of law.

6. Learned Standing Counsel appearing for the Respondents No. 1, 2, 3 & 4 as well as Mr. Durga Singh, learned counsel appearing for the Respondent No. 5 have opposed the writ petition and have submitted that petitioner is a contractual employee and therefore, there is no illegality in the impugned order dated 7.7.2023, whereby petitioner's engagement as Accountant has been terminated. However, learned counsels appearing for the Respondents No.1 to 5 could not deny the settled legal proposition that once a show cause notice has been issued to a contractual employee and reply has been submitted, then while passing the final order, reply should be considered point-wise.

7. Learned counsels appearing for the Respondents No.1 to 5 have further submitted that since the reply submitted by the petitioner to the show cause notices has not been considered, therefore the order dated 7.7.2023 which is impugned in this writ petition may be quashed and matter may be remanded to the competent authority to pass fresh order after considering the reply submitted by the petitioner.

8. I have considered the submissions advanced by the learned counsels appearing for the parties and I find that a show cause notice was issued to the petitioner on 20.5.2023 but it was not served to her till 10.7.2023 and when it was served, petitioner immediately submitted her reply on 10.7.2023 itself. I further find that another show cause notice was issued to the petitioner on 3.6.2023, to which petitioner has submitted her reply on 8.6.2023.

9. This court is of the view that it is well settled proposition of law that once a show cause notice has been issued to a contractual employee and he has submitted his reply, then competent authority while passing the final order, must consider the reply and if the reply has not been considered, then the order passed in the matter cannot sustain in the eyes of law. A bare perusal of the order dated 7.7.2023 which is impugned in this writ petition, clearly reveals that reply submitted by the petitioner to the show cause notice has not been considered at all and without doing so, engagement of the petitioner as Accountant has been terminated. Therefore, the order dated 7.7.2023 is unsustainable in the eyes of law.

10. Even otherwise, learned counsels appearing for the respondents have admitted that the reply submitted by the petitioner to the show cause notice has not been considered while passing the impugned order dated 7.7.2023 and have prayed that the order dated 7.7.2023 may be quashed and matter may be remanded to the competent authority for passing fresh order.

11. In view of the aforesaid reasons, this writ petition is allowed. The order dated 7.7.2023 contained in Annexure No.15 to the writ petition, is quashed and matter is remanded to the competent authority to pass fresh order after considering the reply submitted by the petitioner. It is further provided that fresh order shall be passed by the competent authority within six weeks from today and reinstatement of the petitioner shall depend on the fresh order to be passed by the competent authority.

Order Date :- 3.11.2023
Gaurav/Salim